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| 10/600,078 | 06/20/2003 | Richard Rollin | 1801/88 | 6850 |

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EXAMINER

ANDERSON, CATHARINE L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3761

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,078

Applicant(s)

ROLLIN ET AL.

Examiner

C. Lynne Anderson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 35-50 is/are pending in the application.
- 4a) Of the above claim(s) 18-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 35-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 24 July 2006 have been fully considered but they are not persuasive.

In response to the applicant's argument that Silver fails to disclose communication between the port and the opening, it is noted that the instant claim does not require the port and the opening to be directly connected by a channel. It is still within the scope of the claim that the port and the opening are in communication with each other (i.e. air may pass through one and then the other) without being directly connected. Therefore, since the port and the opening disclosed by Silver are within the same air path, they are considered to be in communication with one another and fulfill the limitations of the claim.

In response to the applicant's argument that Silver fails to disclose upper and lower portions with different diameters, it is noted that Silver shows a female coupling component 52 that is sized and shaped to fit snugly with the male coupling components 54. The female components therefore have an upper portion having a diameter matching the second end of the male component, and a lower portion having a diameter matching the first end of the male component.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-37 and 35-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Silver (5,797,875).

With respect to claims 1, 6, 35, and 40, Silver discloses an adapter 32, as shown in figure 1, connecting a vacuum source 24 to a breast shield 22. The adapter 32 comprises a housing 46, as shown in figure 2, having two female coupling components 52 defined by the interior sidewall surface of the housing. A port 42 allows communication with the internal chamber of the housing via channels 59. The female coupling components 52 are sized and shaped to fit snugly with the male coupling components, as disclosed in column 3, lines 62-66. The male coupling components 54, as shown in figure 22, have a first end, a second end, and a passageway connecting the ends. The first end receives vacuum tubing 44 and the second end receives the female coupling component, as disclosed in column 5, lines 52-61. The second end has a first end diameter 82, a second end diameter 86 that is greater than the first end diameter 82, and a sealing surface 84. The male coupling component is received in the upper portion of the female coupling component to form an airtight engagement. Since the female coupling components 52 are sized and shaped to fit snugly with the male coupling components 54, the female components therefore have an upper portion having a diameter matching the second end of the male component, and a lower portion having a diameter matching the first end of the male component. Therefore, the female coupling components have an upper portion having a diameter greater than the

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diameter of the lower portion. A stopper 70 is provided to engage the upper portion of the female coupling component, as shown in figure 21.

With respect to claims 2 and 36, the channel 59 is formed axially along the lower portion, as shown in figure 7.

With respect to claims 3 and 37, the female coupling components 52 are defined by the bottom surface of the housing 46, as shown in figure 2.

With respect to claims 4 and 38, grooves 76 are in communication with the channels 59.

With respect to claims 5 and 39, the channels 59 include three channels 59a, 59b, and 59c, being evenly spaced about the periphery of the lower portion, as shown in figure 7.

With respect to claims 7 and 41, an aperture 63 extends between ambient atmosphere and the female coupling component, as disclosed in column 5, lines 30-33.

With respect to claims 8-13 and 42-47, the sealing portion 84 has a cross-section that matches the cross-section of the upper portion of the female coupling component 52. The upper portion of the female coupling component 52 is shown in figure 2 as having a cross-section that is generally triangular, but has rounded ends making it generally circular, and multiple surfaces, making it generally polygonal.

With respect to claims 14-15 and 48, the sealing portion 84 has circumferential grooves and rings therein, as shown in figure 25, and sealably engages with the upper portion of the female coupling component 52.

With respect to claims 16 and 49, the vacuum source is a piston pump 30.

With respect to claims 17 and 50, the second end of the male coupling component 54 is sized and shaped to be received in the lower portion via female coupling component 52 and in the breast shield via tubing 44.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5 and 35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/622,720. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would be obvious that the amount of flow of the stoppered coupling component is less than the flow of the unstoppered coupling component since the purpose of the stopper is to impede flow.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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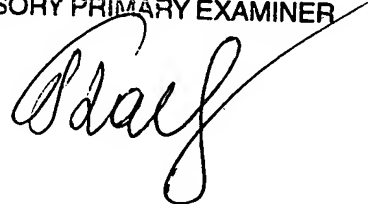
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMA

cla

September 30, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', is written over the printed name and title of the examiner.